IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

WP(C).No. 11653 of 2007(K)

PETITIONER:

P.M.HASSAN KUTTY,
PARAPILLIL HOUSE, KUMMANAM P.O.,
KOTTAYAM.

BY ADV. SRI.P.SANTHOSH KUMAR (PANAMPALLI NAGAR)
SRI.LUIZ GODWIN D'COUTH

RESPONDENTS:

1. STATE OF KERALA REPRESENTED BY
SECRETARY TO GOVERNMENT, GENERAL EDUCATION
DEPARTMENT, SECRETARIAT.

2. DIRECTOR OF PUBLIC INSTRUCTION,
TRIVANDRUM.

3. GOPINATHAN, SAKTHI TRADERS,
ERUVA P.O., KAYAMKULAM.

BY ADV. SRI.A.K.CHINNAN
SMT.SUSAL A. CHINNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16.6.2007, THE COURT ON 14/06/2007 DELIVERED THE FOLLOWING:

W.P(C).No. 11653/07.

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE TENDER PUBLICATION DTD.25.1.2007.

P2. COPY OF THE COVERING LETTER DTD.19.2.2007 BEFORE R2.

P3. COPY OF THE NOTIFICATION DTD.1.3.2007.

P4. COPY OF THE DD DTD.21.3.2007 TAKEN BY THE PETITIONER.

P5. COPY OF THE PAPER PUBLICATION DTD.21.3.2007.

P6. COPY OF THE ORDER DTD.18.6.2003 BY THE DY. DIRECTOR OF EDUCATION, MALAPPURAM.

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///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.

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W.P.(C).No.11653 of 2007

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Dated this the 14th day of June, 2007

J U D G M E N T

By Ext.P1 tender notification, the 2nd respondent invited tenders for sale of valued SSLC answer papers. As per the same, quotations were to be submitted before 3 p.m. on 19.2.2007. Tenders were to be opened at 3 p.m. on 22.2.2007. After complying with formalities prescribed, the petitioner submitted his tender quoting Rs.17.69 per kg. The petitioner alleges that although on 22.2.2007 all tenderers were present for opening of the tenders received, the 2nd respondent without assigning any reason, postponed the opening of the tenders. Thereafter, another notification was issued by the 2nd respondent, viz., Ext.P3, again inviting tenders. In the same, the third respondent quoted Rs.6.89 per kg and he was selected as the highest bidder. The petitioner alleges that there

was collusion between the 2nd respondent and the third respondent, and it is only to facilitate award of tender to the third respondent that notification was again published. In view of the large difference between the petitioner's first quotation and the third respondent's quotation, I had admitted this writ petition and granted an interim order recording the petitioner's undertaking that he is prepared to take the valued answer sheets at the rate of Rs.17.69 per kg, if ultimately, this court directs him to do so. Thereafter, notice was served on the respondents.

2. The third respondent has filed a counter affidavit. Respondents 1 and 2 have not chosen to file any counter affidavit. Although he offers an explanation for publication of the second tender notice as owing to a mistake in the tender notification, the 2nd respondent has not come forward to support the same. The third respondent would submit that he has participated in the second tender validly and complying with the terms and

conditions of the tender and therefore he cannot be denied the tender on the grounds mentioned in the writ petition.

3. Since there is substantial difference between the two quotations, I put it to the counsel for the third respondent as to whether the third respondent is willing to take the tender at the rate of Rs.17.69 per kg. He said that he is not willing. He thereafter, submitted that since he has already deposited money which is lying with the 2nd respondent for the past two months, he is entitled to be adequately compensated, if this court directs that the petitioner's first tender be accepted.

4. Since the State would stand to gain considerably if the petitioner's first tender is accepted, which was validly submitted, I am inclined to direct the 2nd respondent to award the tender to the petitioner pursuant to the first tender at the rate of Rs.17.69 per kg. This is because, according to me, even after the second notification, the tenders received as per the 1st

notification also should have been considered as the mistake if any, was with the 2nd respondent. Accordingly, I direct the 2nd respondent to accept the offer of the petitioner at the rate of Rs.17.69 per kg. However, if the petitioner now withdraws from the offer, it would be open to the 2nd respondent to recover the loss which may be occasioned on account of re-tender from the petitioner.

5. Since it is on account of the indifferent handling of the tender process by the 2nd respondent that this confusion has occasioned, I direct the 2nd respondent to return the amount deposited by the third respondent with interest at the rate of six percent per annum within two weeks from today.

Writ petition is disposed of as above.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.